

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

UNITED STATES OF AMERICA

v.

INDICTMENT

GARY R. TOMEY II
and
ERIC T. EAKES

3:15cr60/MCR

THE GRAND JURY CHARGES:

COUNT ONE

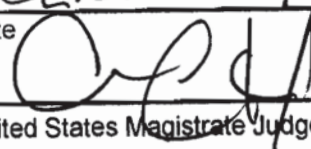
A. THE CHARGE

Between on or about August 12, 2008, and on or about May 31, 2012, in the
Northern District of Florida and elsewhere, the defendants,

GARY R. TOMEY II
and
ERIC T. EAKES,

did knowingly and willfully combine, conspire, confederate, and agree together and with
other persons to commit offenses against the United States, namely:

1. To devise a scheme to defraud and to obtain money and property by
means of material false and fraudulent pretenses, representations, and promises, and for
the purpose of executing this scheme, did cause items to be sent and delivered by the
United States Postal Service and by any private and commercial interstate carrier, in
violation of Title 18, United States Code, Section 1341; and

| | |
|--|--|
| Returned in open court pursuant to Rule 6(f) | |
| October 21, 2015 | |
| Date |  |
| United States Magistrate Judge | |

2. To devise a scheme to defraud and to obtain money and property by means of material false and fraudulent pretenses, representations, and promises, and for the purpose of executing this scheme, did cause wire communications to be transmitted in interstate commerce, in violation of Title 18, United States Code, Section 1343; and these offenses were committed in connection with the conduct of telemarketing as defined in Title 18, United States Code, Section 2325, and in doing so victimized 10 or more persons over the age of 55.

B. MANNER AND MEANS

It was part of the scheme to defraud that:

1. Defendants **GARY R. TOMEY II** and **ERIC T. EAKES** operated a telemarketing business in Milton, Florida, under the name of Children and Family Services Inc. ("CFS"), and later under the name of Children's Charitable Services Inc. ("CCS"). Defendant **TOMEY** was the registered agent of, and had signatory authority over, CFS and CCS, and defendant **EAKES** managed the CFS and CCS office in Milton, Florida.

2. Defendant **GARY R. TOMEY II** also incorporated or registered other entities to use as part of the scheme, including: Youth Achievement League Inc.; Alabama Children and Family Services Inc.; Arkansas Children and Family Services Inc.; Indiana Children Services Inc.; Mississippi Children and Family Services Inc.; Mississippi Children's Services Inc.; Ohio Children Services Inc.; and Tennessee Children and Family Services Inc.

3. Defendants **GARY R. TOMEY II** and **ERIC T. EAKES** used charity names that were similar to those of state agencies to attract the attention of potential donors and increase the likelihood that they would send donations.

4. Defendants **GARY R. TOMEY II** and **ERIC T. EAKES** directed CFS and CCS employees to make telephone calls from the office in Milton, Florida, to potential donors in Florida and elsewhere soliciting charitable donations.

5. Defendants **GARY R. TOMEY II** and **ERIC T. EAKES** crafted the solicitation language used by employees to falsely represent that CFS and CCS performed charitable works itself and to fraudulently conceal material facts regarding the true nature of the defendants' telemarketing business. As such, defendants **TOMEY** and **EAKES** directed employees to tell potential donors that: 100 percent of their donation would go to the charity; all proceeds go to help poor, abused, or critically ill children in the locality where the potential donor lived; the employees worked as volunteers; the identified charity does all of its own fundraising; and the employees worked directly for the charity for which they claimed they were soliciting donations.

6. To induce donors to make contributions to CFS and CCS, defendants **GARY R. TOMEY II**, **ERIC T. EAKES**, and employees acting at their direction, also fraudulently omitted facts material to the donors' decision to contribute, including that:

- a. A cease and desist order and a \$25,000 administrative penalty had been issued by the Mississippi Secretary of State against Mississippi Children and Family Services Inc. for soliciting donations without being registered as a charitable organization and making misrepresentations in its solicitation materials;

b. A cease and desist order had been issued by the United States Postal Service against defendant **TOMEY**, doing business as Ohio Children Services Inc., for using the mail to make false representations to solicit money; and

c. As the result of a suit brought by the Arkansas Attorney General for using deceptive and misleading practices to solicit charitable donations, defendant **TOMEY** and CFS, doing business as Arkansas Children and Family Services Inc., paid a \$50,000 fine and were prohibited from doing business in the state of Arkansas.

7. When a donor agreed to make a donation during the solicitation call, defendants **GARY R. TOMEY II** and **ERIC T. EAKES** directed employees to mail the donor a letter that instructed the donor to mail, in the return envelope provided, a donation by check made payable to a specific organization controlled by defendant **TOMEY**. The organization identified was selected because it corresponded to the donor's state of residence.

8. The addresses to which donors were directed to mail checks were identified as office suites, but were, in fact, rented mailboxes at United Parcel Service ("UPS") Stores. Defendants **GARY R. TOMEY II** and **ERIC T. EAKES** caused any mail delivered to the UPS mailboxes to be forwarded to the office of CFS and CCS in Milton, Florida.

9. As a result of this scheme, defendants **GARY R. TOMEY II** and **ERIC T. EAKES** caused CFS and CCS to receive more than \$1.2 million in fraudulently induced donations for their own use and use of others not entitled to the funds, to wit,

employees' wages and commissions, defendants **TOMEY** and **EAKES'** salaries, business expenses, and defendant **TOMEY's** personal use.

All in violation of Title 18, United States Code, Sections 1349 and 2326.

COUNTS TWO THROUGH EIGHT

A. INTRODUCTION

Paragraphs B1 through B9 of Count One of this Indictment are realleged and incorporated herein.

B. THE CHARGE

On or about the dates listed below, in the Northern District of Florida and elsewhere, the defendants,

GARY R. TOMEY II
and
ERIC T. EAKES,

did knowingly and willfully devise a scheme to defraud and to obtain money and property by means of material false and fraudulent pretenses, representations, and promises, and for the purpose of executing this scheme, and attempting to do so, did cause to be sent and delivered by the United States Postal Service and by any private and commercial interstate carrier, the following UPS packages to the CFS and CCS office in Milton, Florida:

| COUNT | DATE | SENT FROM |
|--------------|---------------|--|
| TWO | March 1, 2012 | The UPS Store, Maxwell Air Force Base, Alabama |
| THREE | March 1, 2012 | The UPS Store, Indianapolis, Indiana |
| FOUR | March 1, 2012 | The UPS Store, Cincinnati, Ohio |

| | | |
|--------------|----------------|--------------------------------------|
| FIVE | March 2, 2012 | The UPS Store, Columbia, Mississippi |
| SIX | March 2, 2012 | The UPS Store, Knoxville, Tennessee |
| SEVEN | March 29, 2012 | The UPS Store, Indianapolis, Indiana |
| EIGHT | April 5, 2012 | The UPS Store, Indianapolis, Indiana |

and these offenses were committed in connection with the conduct of telemarketing as defined in Title 18, United States Code, Section 2325, and in doing so victimized 10 or more persons over the age of 55.

In violation of Title 18, United States Code, Sections 1341 and 2326.

CRIMINAL FORFEITURE

The allegations contained in Counts One through Eight of this Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeiture, pursuant to the provisions of Title 18, United States Code, Section 982(a)(8).

From their engagement in any or all of the violations alleged in Counts One through Eight of this Indictment, the defendants,

GARY R. TOMEY II
and
ERIC T. EAKES,

shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(8), any and all of their rights, title, and interest in any property, real and personal:

- i. used and intended to be used to commit, to facilitate, and to promote the commission of such offenses; and
- ii. constituting, derived from, and traceable to the gross proceeds obtained directly and indirectly as a result of the offenses.

If any of the property described above as being subject to forfeiture, as a result of acts or omissions of the defendants:

- i. cannot be located upon the exercise of due diligence;
- ii. has been transferred, sold to, or deposited with a third party;
- iii. has been placed beyond the jurisdiction of this Court;
- iv. has been substantially diminished in value; or
- v. has been commingled with other property that cannot be subdivided without difficulty,


it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1), and Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of said defendants up to the value of the forfeitable property.

A TRUE BILL:

Redacted per privacy policy

FOREPERSON

10 - 21 - 15
DATE


CHRISTOPHER P. CANOVA
Acting United States Attorney


ALICIA H. KIM
Assistant United States Attorney